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NINETY-FIFTH CONGRESS

225-3741

Congress of the United States

House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

Executive Registry

77-1591

June 10, 1977

Admiral Stansfield Turner
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Admiral Turner:

In connection with its oversight responsibilities for the Freedom of Information Act, the Privacy Act and government records policies, this subcommittee is concerned with security classification management practices, and with the use of administrative markings and other identification codes which restrict access to documents.

To assist us in evaluating such practices and restrictions, would you please furnish the subcommittee the following information. Even if some questions do not apply to your agency, please respond to all those which do.

1. Is your agency authorized to classify documents under terms of Executive Order 11652? If so, what terms are used within your agency, either formally or informally, officially or unofficially, to indicate gradations or extensions of the term "top secret", "secret", or "confidential"? (For example, "top secret--grade 1", "secret-sensitive", "top secret--eyes only", "noforn", "official use only", or "non public", etc.) Please list such terms only if used in combination with the standard E.O. 11652 designations.

2. What legend or legends are used by your agency to identify records which are not classifiable under Executive Order 11652 but which are not to be made available outside the department and/or outside the government? For each such term, please list:

(a) Its specific name.

(b) Its application.

(c) The manner in which it was put into use (e.g., agency circular, formal regulation) and by whom (e.g.,

department head, general counsel). Please enclose a copy of the document putting the term into use.

(d) The authority under which the term was put into use (e.g., statute, executive order). Please include a copy of the statute, executive order, or other document furnishing the authorization.

(e) The date it was put into use.

(f) The last occasion on which the need for such a particular designation was reviewed.

(g) The procedure used to remove the marking after some period of time. (I.e., does the restriction automatically expire? Undergo review?) Simply note if this information is included in the material furnished under (c).

(h) The procedure used to evaluate materials with this marking when they are requested under the Freedom of Information Act (e.g., is marked material automatically withheld from being furnished under FOIA? Can anyone other than the person who initially marked the material remove the marking?)

(i) Whether this marking has ever either generally or in a specific case been challenged in court? If so, what was the result and what is the case citation?

(j) The number of agency officials who are authorized to determine that a document or record should be marked with this term.

(k) The criteria by which officials are given authority to determine that a document or record should be marked with this term.

(l) Whether this marking has ever been used on documents which also qualify for security classification under Executive Order 11652. If so, why?

(m) Compared to E.O. 11652 security classifications and from a standpoint of document sensitivity, would you say materials carrying this mark are about as sensitive as materials marked confidential, marked secret, or marked top secret? (I.e., how restrictive is this marking supposed to be?)

(n) Whether you consider material marked with this designation to be freely available when it is sent to the National Archives?

3. Have you stopped using any such legends during the past three years? If so, please list the same details as requested in (a) through (e) of item 2 above, and also state why the legend is no longer used. If some documents still carry this mark from when it was used, please also answer for it questions (g) through (i) and (l) through (n) of item 2 above.

4. How many formal investigations were conducted by your agency at the seat of government between July 1, 1971 and June 30, 1976 into possible violations of your agency's regulations concerning the protection of information which was

(A) Classified under E.O. 11652 or its predecessor, E.O. 10501?

(B) Administratively restricted by use of some term described in your response to question 2 above?

(Do not include routine "desk checks" or similar routine supervision or information protection procedures in tabulating responses to this question.)

Answering separately for categories (A) and (B) above,

(a) How many of those investigations concerned improper physical protection of information?

(b) How many of those investigations concerned failure to assign a high enough security designation to information?

(c) How many of those investigations concerned the assignment of too high a security designation to information?

5. Answering separately for categories (A) and (B) of question 4, in how many instances from July 1, 1971 to June 30, 1976, were

(a) Criminal charges filed, or recommended to be filed, based on failure to protect information?

(b) Administrative hearings held on the same basis?

(c) Administrative penalties, ranging from reprimands, to loss of pay for specified periods, to dismissal, assessed on the same basis?

6. Answering separately for categories (A) and (B) of question 4, in how many instances during the same five year period were charges filed or recommended, administrative hearings held, or penalties of any sort assessed on the basis of over-classification or other excessive restriction on access to information?

7. If your agency conducts investigations for other agencies of the Federal government, state how many formal investigations into possible violations of E.O. 10501 or E.O. 11652 were conducted for those agencies at the seat of government during the five year period.

- (a) How many of those investigations concerned improper physical protection of information?
- (b) How many of those investigations concerned the failure to assign a high enough security designation to information?
- (c) How many of those investigations concerned the assignment of too high a security designation to information?

We appreciate your efforts of compiling this material. Would you please have responses in the hands of the subcommittee by July 15, 1977. If you have questions in the meantime, please contact Richard L. Barnes of the subcommittee staff at 225-3741.

Sincerely,

Richardson Preyer
Richardson Preyer
Chairman

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DCID No. 1/7

DIRECTOR OF CENTRAL INTELLIGENCE DIRECTIVE NO. 1/7¹

CONTROL OF DISSEMINATION OF FOREIGN INTELLIGENCE

(Effective 5 October 1975)

Pursuant to provisions of Subsection 102(d) of the National Security Act of 1947, as amended, and other authorities vested in the Director of Central Intelligence by the National Security Council, certain controls on dissemination of foreign intelligence and related material² (hereafter referred to as foreign intelligence) are hereby established and promulgated.

1. Purpose

This directive establishes certain common controls and procedures for the use and dissemination of foreign intelligence to ensure that, while facilitating the interchange of information for intelligence purposes, there will be adequate protection of foreign intelligence sources and methods. This directive restates applicable portions of National Security Council Directive of 17 May 1972 implementing Executive Order 11652, and prescribes additional controls applicable to the U. S. foreign intelligence mission.

2. Applicability

The controls and procedures set forth in this Directive shall be uniformly applied by all member departments and agencies of the intelligence community in the handling of all materials containing foreign intelligence originated by the Central Intelligence Agency or by the intelligence components of other USIB departments or agencies.

3. National Security Council Directive

a. National Security Council Directive of 17 May 1972 implementing Executive Order 11652 stipulates that, except as otherwise provided by Section 102 of the National Security Act of 1947, classified information or material originating in one department shall not be disseminated outside any other department to which it has been made available without the consent of the originating department. This restriction on dissemination is commonly described as the "third agency rule."

b. The NSC Directive stipulates that the dissemination of classified information, including intelligence and intelligence information, orally, in writing or by any other means, shall be limited to those persons whose official duties or contractual obligations require knowledge or possession thereof. This is commonly referred to as the "need-to-know" principle.

¹ Supersedes DCID 1/7, effective 5 October 1970.

² For purposes of this directive, "related material" includes: information describing U. S. foreign intelligence sources and methods, equipment and methodology unique to the acquisition or exploitation of foreign intelligence, foreign military hardware obtained for exploitation, and photography or recordings resulting from U. S. foreign intelligence collection efforts.

c. The NSC Directive also states that documents or portions of documents containing TOP SECRET information shall not be reproduced without the consent of the originating office. All other classified material shall be reproduced sparingly and any stated prohibition against reproduction shall be strictly adhered to.

d. The NSC Directive further requires that the marking, "WARNING NOTICE—SENSITIVE INTELLIGENCE SOURCES AND METHODS INVOLVED," be prominently displayed on all information and materials relating to sensitive intelligence sources and methods; and, that materials so marked will not be disseminated in any manner outside authorized channels without the permission of the originating department and an assessment by the senior intelligence official in the disseminating department as to the potential risk to the national security and to the intelligence sources and methods involved.³ For special purposes, primarily bibliographic notation, communications, or automatic data processing, this marking may be abbreviated WNINTEL.

4. Advance authorization

a. To facilitate the dissemination and different uses made of classified foreign intelligence within and among USIB departments and agencies, to assure the timely provision of intelligence to consumers and to handle the volume of such materials in a practical way, it is necessary to provide controlled relief to the "third agency rule" within the intelligence community in addition to that provided by Section 102 of the National Security Act of 1947. Accordingly, USIB departments and agencies have been given advance authorization to use each other's classified foreign intelligence in their respective intelligence documents, publications or other information media, and to disseminate their products to third agencies or foreign governments,⁴ subject to limitations and procedures prescribed in this Directive.

b. Classified foreign intelligence documents, even though they bear no control markings, will not be released in their original form to third agencies or foreign governments without permission of the originator. Information contained in classified foreign intelligence documents of another department or agency may be extracted or paraphrased and used by the recipient USIB Agency in classified foreign intelligence reports and released to third agencies, except as specifically restricted by control markings prescribed in this directive. For purposes of this authorization, "WARNING NOTICE—SENSITIVE INTELLIGENCE SOURCES AND METHODS INVOLVED" shall not be considered a restrictive marking.

³ Unless otherwise specified by the Director of Central Intelligence in consultation with USIB or as agreed to between originating and recipient agencies, authorized channels include the intelligence components of USIB departments and agencies and within each department and agency (including their contractors and consultants) as determined by the recipient senior intelligence official.

⁴ Excepting RESTRICTED DATA and formerly RESTRICTED DATA, which is prohibited from foreign dissemination under Sections 123 and 144 of Public Law 585, Atomic Energy Act of 1954, as amended.

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c. Information contained in classified foreign intelligence documents of another department or agency not bearing any control markings may be extracted or paraphrased and used by the recipient USIB Agency in reports disseminated to foreign governments provided:

- (1) No reference is made to the source documents upon which the released product is based.
- (2) The source and manner of acquisition of the information are not revealed.
- (3) Foreign release is made through established foreign disclosure channels and procedures.

d. Any department or agency disseminating foreign intelligence beyond the departments and agencies of the USIB shall be responsible for ensuring that recipient departments and agencies understand and agree to observe the restrictions prescribed by this directive and maintain adequate safeguards.

e. No release of a classified foreign intelligence document, whether or not bearing a control marking, shall be made to foreign nationals and immigrant aliens, including U. S. Government employed, utilized or integrated foreign nationals and immigrant aliens, without the permission of the originating agency.

5. Additional authorized control markings

a. In addition to the WARNING NOTICE prescribed by NSC Directive any of the following additional markings may be used on foreign intelligence whenever, in the opinion of the originating department or agency, extraordinary circumstances related to the intelligence source or methods require more specific dissemination restrictions. Use of these markings shall be limited to foreign intelligence, the disclosure of which, could: compromise the status of collaborating foreign governments or officials or otherwise seriously damage U. S. relations with foreign governments; subject U. S. citizens or others to the possibility of personal danger or incarceration; seriously impair the continuing cooperation of private individuals providing foreign intelligence; seriously affect the continuing viability of vital technical collection programs; or, result in the possible compromise or loss of some unique foreign intelligence source or method. These control markings will be individually assigned at the time of preparation of the completed document and used in conjunction with classification and other markings required by Executive Order 11652 and the implementing NSC directive and, unless otherwise indicated in 6a below, carried forward to any new format in which that information is incorporated, including oral and visual presentations.

(1) "DISSEMINATION AND EXTRACTION OF INFORMATION CONTROLLED BY ORIGINATOR"

This marking shall be used when unique source sensitivity factors, known to the originator, require strict compliance with third agency rule procedures, in addition to a continuing knowledge and supervision on the part of the originator as to the extent to which the original document and information

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contained therein is disseminated. Documents and information bearing this marking will not be disseminated beyond the Headquarters elements of the recipient organizations and the information contained therein shall not be extracted and incorporated into other reports without the permission of and under conditions prescribed by the originator. (For special purposes, primarily bibliographic notation, communications and automatic data processing, this marking may be abbreviated ORCON.)

(2) "USIB DEPARTMENTS ONLY"

Foreign intelligence so marked will not be disseminated to departments and agencies not represented on the U.S. Intelligence Board without the permission of the originating agency. Within each USIB department and agency dissemination shall be as determined by the recipient senior intelligence official, and may include department or agency contractors and consultants unless specifically prohibited by addition of the "NOT RELEASABLE TO CONTRACTORS OR CONTRACTOR/CONSULTANTS" marking described below. (For special purposes, primarily bibliographic notation, communications and automatic data processing, this marking may be abbreviated USIBONLY.)

(3) "NOT RELEASABLE TO CONTRACTORS OR CONTRACTOR/CONSULTANTS"

Foreign intelligence so marked shall not be disseminated to contractors or contractor consultants without the permission of the originating agency. Examples of when this marking may be used include National Intelligence Estimates and similar national intelligence reports, and other foreign intelligence, which, if disseminated to consultants or contractors, might seriously impair the continuing cooperation of contributing private individuals. This restriction shall not apply to those consultants hired under Civil Service Commission procedures, or comparable procedures derived from authorities vested in heads of departments and agencies by law, and who are normally considered an extension of the office by which they are employed. In applying this control marking, originators will give consideration to the need of USIB member Departments and Agencies to use contractor consultants and contractors to perform services which cannot be adequately performed by U. S. Government personnel. (For special purposes, primarily bibliographic notation, communications, or automatic data processing, this marking may be abbreviated NOCONTRACT.)

(4) "CAUTION—PROPRIETARY INFORMATION INVOLVED"

This marking will be used in conjunction with foreign intelligence obtained from various sources in the U.S. private business sector, and as the information may bear upon proprietary interests of the source, or may otherwise be used to the source's detriment. Recipients of reports bearing this marking shall take every reasonable precaution to ensure that the information is not used to the detriment of the source. This marking may be used in conjunction with the "NOT RELEASABLE TO CONTRACTORS OR CONSULTANTS" marking described above. (For special purposes, primarily bibliographic

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notation, communication and automatic data processing, this marking may be abbreviated PROPIN.)

(5) "NOT RELEASABLE TO FOREIGN NATIONALS"

Foreign Intelligence so marked involves special considerations requiring that it not be released in any form to foreign governments, foreign nationals or non-U.S. citizens without the permission of the originating agency. Examples of when this control marking may be used include: the possible compromise of the status of relations with collaborating foreign governments, or officials; or jeopardizing the continuing viability of vital technical collection programs. (For special purposes, primarily bibliographic notation, communications, or automatic data processing, this marking may be abbreviated NOFORN.) When the originating agency predetermines that information can be released to a specified foreign government(s) the following marking may be used: "THIS INFORMATION HAS BEEN AUTHORIZED FOR RELEASE TO (specified country(s))." (For special purposes, primarily bibliographic notation, communications, or automatic data processing, this marking may be abbreviated "REL (specified countries).")

6. Procedures governing use of control markings

a. Any recipient desiring to use foreign intelligence in a manner contrary to the restrictions established by the control markings set forth above shall obtain the permission of the originating agency. Such permission applies only to the specific purpose agreed to by the originator and does not automatically apply to all recipients of the information as originally disseminated unless the originating agency removes the control markings for the benefit of the recipients. In those cases where dissemination outside the recipient agency is desired utilizing lesser or no control markings, the recipient agency should prepare a sanitized version which may be released with the originator's permission.

b. Control markings authorized in paragraphs 3d and 5 above, shall be displayed prominently on documents, incorporated in the text of communication messages, and associated with data stored or processed in automatic data processing systems. Unless the entire document justifies the protection of the control marking(s), each portion requiring the marking(s) shall, to the extent feasible, be marked with the appropriate marking abbreviation authorized by this directive.

c. The standardized restrictions and control markings set forth in this directive are to be employed uniformly by all departments and agencies in the intelligence community, thereby assuring like control and restrictions on the use of foreign intelligence disseminated within the departments and agencies represented on the USIB.

d. The substance of this directive shall be published in appropriate regulatory or notice media of each agency or department, together with appropriate procedures permitting rapid interagency consultation concerning utilization of intelligence and information. For this purpose, each USIB agency will designate a primary referent.

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7. Report of unauthorized disclosure

Violations of the foregoing restrictions and control markings that result in unauthorized disclosure by one agency of the foreign intelligence of another shall be reported to the Director of Central Intelligence through the USIB Security Committee.

8. Prior restrictions and markings

Questions with respect to the current application of control markings authorized by earlier directives on the dissemination and control of intelligence and utilized on documents issued prior to the date of this directive should be referred to the originating agency. These markings are: WARNING NOTICE—SENSITIVE SOURCES AND METHODS INVOLVED, CONTROLLED DISSEM, NSC PARTICIPATING AGENCIES ONLY, INTEL COMPONENTS ONLY, LIMITED, CONTINUED CONTROL, NO DISSEM ABROAD, BACKGROUND USE ONLY and NO FOREIGN DISSEM.

W. E. Colby
Director of Central Intelligence

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EXECUTIVE SECRETARIAT

Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI		✓		
2	DDCI		✓		
3	D/DCI/IC		✓		
4	DDS&T				
5	DDI				
6	DDA		✓		
7	DDO				
8	D/DCI/NI		✓		
9	GC		✓		
10	LC	✓			
11	IG				
12	Compt				
13	D/Pers				
14	D/S				
15	DTR				
16	A/DCI/PA				
17	AO/DCI				
18	C/IPS		✓		
19	DCI/SS				
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	SUSPENSE		20 JUN		

Remarks:

TO 10: Please develop DCI
response

13 JUN

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Date